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TWENTIETH CENTURY FOX FILM CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BAGDASARIAN PRODUCTIONS, LLC, a California limited liability company, and JANICE KARMAN, an individual,

Plaintiffs.

Y.

TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation,

Defendant.

Case No. CV 10-02991 MWF (JCGx)

Referred under Cal. Code Civ. Proc.
Section 638 to:

Hon. Carl J. West (Ret.)

JAMS Reference No. 1220044628

**CONFIDENTIAL FILED UNDER
SEAL**

**DECLARATION OF LOUIS A.
KARASIK IN SUPPORT OF
DEFENDANT TWENTIETH
CENTURY FOX FILM
CORPORATION'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

[Filed concurrently with Notice of Motion; Memorandum of Points and Authorities; Declaration of Casondra K. Ruga in support of Motion for Attorneys' Fees and Costs; Notice of Application to Tax Costs and Proposed Bill of Costs; Declaration of Casondra K. Ruga in support of Application to Tax Costs; and [Proposed] Order Granting Fox's Motion for Attorneys' Fees and Costs and Fox's Application to Tax Costs]

Filing Date: April 21, 2010

DECLARATION OF LOUIS A. KARASIK

I, Louis A. Karasik, declare and state as follows:

1. I am a partner with Alston & Bird LLP (“A&B”), counsel for Defendant Twentieth Century Fox Film Corporation (“Fox”) in this action. I submit this declaration in support of Fox’s Motion for Attorneys’ Fees and Costs (“Motion”) against Plaintiffs Bagdasarian Productions, LLC (“BPL”) and Janice Karman (“Karman”) (collectively “Plaintiffs”). I have personal knowledge of the facts stated in this declaration and would competently testify thereto if called as a witness in this matter.

I. SUPPORTING INFORMATION ABOUT FOX'S FEES IN DEFENSE OF THE COPYRIGHT-RELATED CLAIMS

2. In this declaration and the accompanying exhibits, I detail the legal services performed by A&B since October 6, 2009 to defend against Plaintiffs’ “Copyright-related Claims”, which refers to the claims asserted in the first four Counts of Plaintiffs’ Complaint for a declaration of co-ownership and accounting based on claimed “joint author” status under the Copyright Act (Count I), copyright infringement (Count II) and claims for unjust enrichment for Fox’s use of Karman’s alleged writing (Count III) and graphic designs (Count IV). All of the fees incurred in defense of the Copyright-related Claims that are the subject of this Motion have been paid by Fox. To aid the Court in its evaluation of the reasonableness of the fees associated with the defense of these claims, we have prepared a spreadsheet (Exhibit 1) that reproduces the time-entries from A&B’s billing statements to Fox (both the description of the work and amount of time associated with that work) related to defense of the Copyright-related Claims from October 2009, when Plaintiffs’ counsel threatened copyright claims, through December 3, 2012, when the Referee issued his Ruling on the Motion to Dismiss dated November 14, 2012, dismissing the Copyright-related Claims. Except as noted herein, the time-entries and hours information that appear in Exhibit 1 are identical to the corresponding entry on the original billing

1 statements A&B sent to Fox.

2 3. The time-entries in Exhibit 1 only include entries from the billing
3 records that reflect activity related to defense of the Copyright-related Claims. In
4 some cases, those entries, just as they appear on the bills sent to Fox, include
5 additional information about work related to the defense of other claims. In Exhibit 1,
6 we have in most cases redacted from those entries the description of work not
7 associated with the defense of the Copyright-related Claims. In each case where the
8 time-entry included activity unrelated to the Copyright-related Claims, we have
9 conservatively apportioned the time between the Copyright-related Claims and the
10 other activity. That apportionment is represented in Exhibit 1 by the column labeled
11 “Copyright related,” under which there is a percentage allocation for each time-entry
12 on the spreadsheet. I have personally reviewed each of these allocations to ensure that
13 they are reasonable and apportion the time in a manner that affords Fox recovery only
14 for the time reasonably spent to defend against the Copyright-related Claims.

15 4. In submitting this detailed information about the legal services
16 provided to Fox, Fox intends no waiver of attorney-client or work product privilege.
17 In some cases, we have redacted information from the time-entries that contain
18 information we consider unnecessary to reasonably establish the services provided and
19 the reasonableness of the fees. Where such redactions have been made to time-entries
20 reflecting work on the Copyright-related Claims, we have inserted a parenthetical to
21 generally describe the activity and to identify where confidential content has been
22 omitted. For example, in various time-entries we have redacted the names of Fox
23 counsel with whom A&B has communicated from time to time and inserted a
24 parenthetical indicating that we communicated simply with “[Fox legal]”. In other
25 cases we have provided a description of the legal services provided that generalizes
26 the activity to avoid revealing privileged information or overly invasive details. The
27 inadvertent disclosure of any privileged information should not be considered a
28 waiver of applicable privilege and Fox expressly reserves the right to amend or

1 withdraw any information disclosed herein in the event of any assertion of privilege
2 waiver.

3 **a. Detailed Summary of Legal Services Rendered in Defense of the**
4 **Copyright-related Claims**

5. Fox's defense of the Copyright-related Claims required extensive
6 legal services that took place over a four-year period. To further enable the Referee to
7 evaluate these services, in Exhibit 1 we have provided allocations of the time-entries
8 into five general categories: Factual Investigation, Legal Analysis, Briefing, Hearings
9 and Other Case Activity. These allocations are found under the heading "Allocations"
10 of Exhibit 1 and are represented by percentages that apportion each time-entry into
11 one or more of these five categories. I have personally reviewed each of these
12 allocations to ensure that they reasonably apportion the services between these
13 categories.

14. As further detailed below and in Fox's accompanying
15 Memorandum of Points and Authorities, Fox's defense of the Copyright-related
16 Claims included enforcement of the parties' agreement to resolve all disputes in
17 accordance with Cal. Code Civ. Proc. Section 638 ("638 Reference"). In Exhibit 1 we
18 have provided the Referee with allocations that indicate the amount of time devoted to
19 638 Reference issue. These allocations are found in the column labeled "638
20 Reference" on Exhibit 1, which indicates the percentage of each time-entry associated
21 with defense of the Copyright-related Claims associated with the 638 Reference issue.
22 I have personally reviewed each of these allocations to ensure that they reasonably
23 apportion the services directed to 638 Reference issue.

24. Exhibits 2, 3 and 4 use the allocation information from Exhibit 1 to
25 provide detailed information about the fees incurred by Fox in each year from 2009 to
26 2012 to defend against the Copyright-related Claims, with specific information about
27 the hours spent by each of the partners, associates or para-professionals who rendered
28 services. Exhibit 2 provides a summary of all fees incurred on Copyright-related

1 Claims with specific information about the number of hours spent by each time-biller
2 over the 2009-2012 time period and their billable rates for the work performed.
3 Exhibit 3 provides detailed information specifying the number of hours and
4 corresponding fees in defense of the Copyright-related Claims for activity not
5 involving the 638 Reference issue and Exhibit 4 provides detailed information about
6 the fees incurred for the 638 Reference related issue.

7 **b. Description of Legal Services in Defense of Copyright-related**
8 **Claims**

9 8. As detailed in Exhibits 1 through 4, Fox incurred \$837,006 in fees
10 to defend against Plaintiffs' Copyright-related Claims for which it seeks recovery by
11 this Motion. *See* Ex. 2. All of these fees were reasonable and necessary to defend
12 against the Copyright-related Claims. We review below the legal services that A&B
13 rendered to Fox to defend against the Copyright-related Claims that comprise these
14 fees.

15 i. **Plaintiffs' Assertion of Copyright-related Claims and Fox's**
16 **Retention of A&B**

17 9. On October 6, 2009, Larry Shire, Esq., of the Grubman Indursky &
18 Shire firm, sent a letter to Fox on behalf of Plaintiffs threatening claims (among
19 others) for copyright infringement directed to Fox's anticipated December 23, 2009
20 release of *Alvin and the Chipmunks: The Squeakquel* ("The Squeakquel"). Mr. Shire
21 asserted that the film was based on or included written materials and graphic designs
22 contributed by Karman and that release of the picture would result in copyright
23 infringement litigation. The letter also asserted claims for breach of contract based on
24 the Purchase Price term of the parties' March 2004 Purchase/Producer Agreement –
25 Literary Material "Alvin and the Chipmunks" (hereinafter "Agreement"), breach of
26 merchandising obligations, violation of approval rights and other contract claims, all
27 of which Plaintiffs ultimately asserted against Fox in their initial pleading filed on
28 April 21, 2010. Attached hereto as Exhibit 5 is a true and correct copy of Mr. Shire's

1 letter. Fox released *The Squeakquel* as planned on December 23, 2009.

2 10. My firm was retained by Fox to represent it in connection with the
3 copyright and other claims described in the October 2009 letter and to thereafter
4 represent the company in the litigation. On December 7, 2009, I responded to Mr.
5 Shire's letter on behalf of Fox. My letter addressed each of the claims identified in
6 Mr. Shire's letter and explained in detail why the facts and plain language of the
7 Agreement defeated each claim, and included citation to pertinent authorities
8 supporting Fox's position. Attached hereto as Exhibit 6 is a true and correct copy of
9 my letter to Mr. Shire.

10 11. On January 27, 2010, Plaintiffs' litigation counsel, Gerald Harper
11 of Paul, Weiss, Rifkind, Wharton & Garrison LP, responded to my letter of December
12 7, 2009. Plaintiffs' counsel rejected Fox's position. Attached hereto as Exhibit 7 is a
13 true and correct copy of Mr. Harper's letter.

14 12. Plaintiffs filed their Complaint on April 21, 2010 and asserted the
15 Copyright-related Claims. The Complaint also alleged BPL's claim for alleged breach
16 of contract and/or the covenant of good faith and fair dealing based on the Agreement
17 (Count V) with respect to provisions involving (i) the "Purchase Price" and sequel
18 compensation terms of paragraphs 6, 7 and 12 of the Agreement ("Purchase Price
19 Claim"); (ii) "Picture-Related Merchandising" under paragraph 9 of the Agreement
20 (the "Merchandising Claim"); (iii) approval and consultation rights under paragraphs
21 15 and 16 of the Agreement ("Approval Rights Claim"); and (iv) access and invitation
22 to meetings under paragraph 16 of the Agreement ("Access to Meetings Claim").

23 13. After the Ninth Circuit dismissed Plaintiffs' appeal of the District
24 Court's order enforcing the 638 Reference (detailed more fully below), on July 17,
25 2012, I participated in a telephone discussion with Steve Marenberg, counsel for
26 Plaintiffs, during which I advised Mr. Marenberg that Fox intended to move to
27 dismiss certain of Plaintiffs' claims, including the Copyright-related Claims. During
28 the discussion, I detailed the factual and legal basis for Fox's motion and identified

1 relevant provisions of the Agreement that contradicted Plaintiffs' claims.

2 14. Following my discussion with Mr. Marenberg, on August 10,
3 2012, Plaintiffs filed their First Amended Complaint ("FAC"). The FAC reasserted
4 the Copyright-related Claims and added claims for breach of implied contract directed
5 to asserted writing services ("Writing Services Claim") (Count V) and asserted
6 graphic design services ("Graphic Design Services Claim") (Count VI). BPL added
7 claims to the breach of contract/implied covenant claim (newly renamed Count VII)
8 asserting breaches involving (i) "Soundtrack Royalties" payable for the *Alvin and the*
9 *Chipmunks* ("Alvin") soundtrack album under paragraph 10 of the Agreement ("Alvin
10 Soundtrack Claim"); (ii) pay television distribution ("Alvin HBO Distribution Claim")
11 under paragraphs 5 and 10 of the Agreement and (iii) cable television distribution
12 ("FX Distribution Claim") under paragraphs 5 and 10 of the Agreement.

13 ii. **Fees In Defense of Copyright-related Claims to Investigate,**
14 **Assess and Obtain Dismissal on the Merits**

15 15. Exhibits 2 and 3 detail the fees incurred by Fox in defense of the
16 Copyright-related Claims on matters unrelated to enforcement of the 638 Reference.
17 Fox's defense of the Copyright-related Claims involved substantial activity in each of
18 the categories of Fact Investigation, Legal Analysis, Briefing, Hearings and Other
19 Case Activity. The following is a description of those activities:

20 a. **Fact Investigation:** Exhibit 3 reflects that A&B expended
21 time resulting in \$95,345 in fees from 2009 to 2012 for fact investigation of the
22 Copyright-related Claims. Fact investigation extended over the period October 2009
23 when Mr. Shire sent his letter threatening Fox with copyright infringement claims,
24 and intensified after the Complaint was filed in April 2010.

25 (1) The time-entries reproduced on Exhibit 1 reflect the
26 substantial scope of factual investigation necessary to defend against the Copyright-
27 related Claims. Plaintiffs pursued claims seeking 50% of the profits of *The*
28 *Squeakquel*, a film that produced world-wide box office revenues of over \$360

1 million. A&B was tasked to develop the factual background into such claims and to
2 determine the nature and extent of defenses available to Fox. Given the claimed
3 damages, prudence dictated a thorough investigation of all aspects of the claim,
4 despite the strength of Fox's position under the Agreement. A&B initiated review of
5 the parties' contractual relationship, their dealings in connection with development
6 and production of *The Squeakquel* over a two year period, the parties' prior dealings
7 in connection with production and development of the *Alvin* film, and claims that
8 Plaintiffs contributed writing and graphic designs that were a material part of *The*
9 *Squeakquel*. This activity included interviews with key executive such as Elizabeth
10 Gabler, Erin Siminoff, Karen Rosenfelt and Stephen Plum and gathering and
11 reviewing numerous custodian files.

12 (2) One of the important tasks in connection with the factual
13 investigation into Plaintiffs' claims was to gather, review and analyze Karman's
14 purported producer notes and screenplay materials for *The Squeakquel* and to
15 determine whether or in what manner these materials were reflected in the film. If
16 Karman's materials were not used in the film, if the claimed materials could not
17 reasonably be attributed to Karman, or if the claimed materials were generic and failed
18 to reflect expression protectable under the Copyright Act, Plaintiffs' copyright claims
19 would fail to that extent. Any purported damages claims would substantially depend
20 on an analysis of such issues and whether any meaningful part of the picture was
21 based on Karman's claimed contributions. This was a time-consuming process
22 because of the enormous volume of notes and screenplay materials exchanged over
23 the lengthy course of development of the picture.

24 (3) Fact investigation into these issues included investigation
25 into the Writers Guild of America ("WGA") proceedings in which Karman
26 participated in the May to September 2009 time frame. Karman advanced arguments
27 in these proceedings about her alleged contributions to *The Squeakquel* in an effort to
28 obtain screenplay credit – arguments rejected by all three WGA arbitrators, who found

1 Karman's claimed contributions insufficient to warrant any credit. Fox was not a
2 participant in the WGA proceedings and learned of the details of Karman's arguments
3 and the arbitrator's written decisions during our factual investigation into the claims
4 and during the course of discovery.

5 (4) Factual investigation was also necessary into the copyright
6 registrations secured by Karman in or about April 2010 when the Complaint was filed,
7 purporting to describe her claimed copyright interest in screenplay materials. Fox
8 pursued defenses that the copyright registrations themselves defeated Plaintiffs'
9 infringement claims, as many of them identified Fox as a co-author of the materials,
10 and there can be no infringement claim by one co-author against another co-author.
11 Factual investigation into such issues was particularly appropriate because the
12 Complaint purported to allege alternative claims for co-author status and copyright
13 infringement, and it was necessary and appropriate to determine whether the copyright
14 registrations supported either claim or defeated each claim. This activity included
15 obtaining and evaluating materials provided by Karman to the Copyright Office.

16 (5) Factual investigation also extended into defenses such as
17 Fox's implied license defense. Plaintiffs requested throughout 2008 and 2009 that
18 Karman's materials be included in *The Squeakquel*, and such activity is inconsistent
19 with any claim for copyright infringement. Fox further investigated the facts
20 associated with Plaintiffs' assertion in her "joint authorship" claim that Fox intended
21 Karman to have co-author status for screenplay materials she prepared for *The
22 Squeakquel*.

23 (6) We also investigated Plaintiffs' damages claims and the
24 manner in which any purported accounting of profits would be conducted should
25 Plaintiffs recover on their theories. Such analysis was necessary and appropriate to
26 assist Fox in evaluating the claims and the claimed damages exposure.

27 b. **Legal Analysis:** Exhibits 2 and 3 reflect A&B's fees in the
28 amount of \$167,044 from 2009 to 2012 for substantive legal analysis in defense of

1 Copyright-related Claims (unrelated to the 638 Reference issue). The legal analysis
2 commenced when Fox received the October 2009 letter from Shire and continued
3 throughout the period Fox was required to defend against the claims.

4 (1) Plaintiffs Copyright-related Claims required substantial
5 legal analysis in many different categories of defense. A&B performed research and
6 analysis into whether the materials Karman claimed to have submitted contained
7 protectable elements/expression. Fox investigated Plaintiffs' ability to prosecute
8 alternative and inconsistent claims for joint author status and copyright infringement
9 and the impact of Karman's copyright registrations on her purported claims. We
10 researched Fox's preemption defenses with respect to the unjust enrichment claims
11 and defenses of implied license. We examined the authorities in connection with the
12 potential damages and relief available to Plaintiffs under their Copyright-related
13 Claims.

14 (2) One key area of legal analysis – which ultimately was
15 dispositive of the claim – was the bar to Plaintiffs' Copyright-related Claims posed by
16 the plain language of the Agreement. Fox conducted analysis of the authorities that
17 preclude prosecution of claims inconsistent with the terms of the parties' contract and
18 the availability of a motion to dismiss to terminate such claims. In this area, Fox was
19 required to conduct research into the arguments Plaintiffs raised seeking to avoid
20 dismissal, including their assertion that the Agreement did not afford Fox the right to
21 use screenplay materials generated by Karman, even though the Agreement grants Fox
22 the right to use every constituent element found in a screenplay and all drafts and
23 arrangements of such elements and contains other language reflecting the parties'
24 plain intent that Fox have the right to use all materials generated by Karman. Fox was
25 also required to research other arguments advanced by Plaintiffs in their opposition to
26 the motion to dismiss seeking to avoid dismissal of the Copyright-related Claims.

27 c. **Drafting Briefs:** On August 31, 2012, Fox moved to
28 dismiss the Copyright-related Claims, the Merchandising Claim and the Purchase

1 Price Claim. The motion directed to the Copyright-related Claims was based on
2 defects in these claims that Fox had detailed to Plaintiffs' counsel as early as
3 December 2009. The briefing related to Fox's Motion to Dismiss Plaintiffs'
4 Copyright-related Claims resulted in \$56,666 in fees (inclusive of the opening and
5 reply paper). The motion focused on the language of the Agreement that disposed of
6 the Copyright-related Claims. The fees for this activity detailed in Exhibit 3 do not
7 include any time incurred by Fox to brief other issues raised in Fox's Motion to
8 Dismiss (directed to the Purchase Price Claim and Merchandising Claim). In a
9 November 14, 2012 Ruling on Fox's Motion to Dismiss ("MTD Order"), the Referee
10 granted Fox's motion as to the Copyright-related Claims. The Referee's December 3,
11 2012 Order confirmed that the MTD Order would stand as the ruling of the Referee on
12 Fox's Motion to Dismiss. Attached hereto as Exhibit 8 is a true and correct copy of
13 the MTD Order and the Referee's December 3, 2012 Order.

24 16. Exhibits 1 and 4 detail that Fox incurred \$489,335 in fees in
25 defense of the Copyright-related Claims as a result of Plaintiffs' refusal to participate
26 in 638 Reference for these claims. Specifically, Fox incurred \$261,793 in fees for
27 Legal Analysis, \$129,725 in fees for Briefing, \$86,936 in connection with Hearings
28 and \$10,882 for Other Case Activity. The time-entries comprising this work are

1 detailed in Exhibit 1 and a detailed account of the activity for each of the above-
2 described categories is set forth in Exhibit 4. The following is a description of the
3 activity resulting in these fees.

4 17. Shortly after Plaintiffs filed the Complaint, on April 28, 2010 I
5 spoke with Plaintiffs' counsel Lynn Bayard and requested that Plaintiffs stipulate to
6 adjudicate their claims pursuant to Cal. Code Civ. Proc. Section 638 ("638
7 Reference"), the dispute resolution mechanism agreed upon under paragraph 21(c) of
8 the Agreement. Plaintiffs refused to participate in 638 Reference. On May 27, 2010,
9 we sent Ms. Bayard a letter formally initiating a meet and confer process over Fox's
10 anticipated motion to enforce the 638 Reference provision. Attached hereto as Exhibit
11 9 is a true and correct copy of our May 27 letter to Ms. Bayard. On June 4, 2010, I
12 had a meet and confer discussion with Ms. Bayard regarding Plaintiffs' assertion that
13 the 638 Reference provision in the Agreement did not apply to Karman's copyright
14 claims, the substance of which I subsequently confirmed in a June 7, 2010 letter to
15 Ms. Bayard, attached hereto as Exhibit 10. Plaintiffs' position was that their pursuit
16 of copyright claims precluded 638 Reference.

17 18. As a result of Plaintiffs' refusal to participate, Fox was forced to
18 file a motion to compel enforcement of the 638 Reference to defend against the
19 Copyright-related Claims. The motion to enforce the 638 Reference was filed on June
20 18, 2010. Fox incurred substantial fees for legal analysis necessary to enforce the
21 parties' 638 Reference. This analysis included briefing of controlling Ninth Circuit
22 authority (*Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 512 (9th Cir.
23 1988)) that a claim "arises out of" a contract and is subject to a contractual forum
24 selection clause whenever contract interpretation will be necessary to adjudicate the
25 claim. Fox was also compelled to respond to Plaintiffs' various arguments that a
26 federal court's exclusive jurisdiction over copyright claims precludes resolution of
27 copyright disputes through 638 Reference.

28 19. On August 12, 2010, the District Court, the Honorable Jacqueline

1 H. Nguyen, granted Fox's motion, finding that the copyright claims arise out of the
2 Agreement because the controversy requires interpretation of the Agreement, and
3 rejecting all of Plaintiffs' jurisdictional challenges ("Reference Order"). Attached
4 hereto as Exhibit 11 is a true and correct copy of the Reference Order. Judge Nguyen
5 directed the parties to proceed expeditiously with the 638 Reference. (Ex. 11,
6 Reference Order at 6.)

7 20. On August 25, 2010, I had a telephone conversation with Ms.
8 Bayard wherein she advised that Plaintiffs would be seeking a writ of mandamus to
9 challenge the Reference Order. Attached hereto as Exhibit 12 is a true and correct
10 copy of my August 31, 2010 letter to Ms. Bayard memorializing our discussion. I
11 confirmed in this letter my efforts to dissuade Plaintiffs from pursuing challenges to
12 the Reference Order that would only delay the proceedings further. I noted Judge
13 Nguyen's direction that the parties proceed expeditiously to initiate the 638 Reference.
14 Despite these efforts, on September 1, 2010, Plaintiffs filed a Petition for Writ of
15 Mandamus with respect to the Reference Order, and on September 10, 2010, Plaintiffs
16 filed a Notice of Appeal relating to the Reference Order.

17 21. On November 2, 2010, the Ninth Circuit issued an order denying
18 the Petition for Writ of Mandamus stating "Petitioners have not demonstrated that
19 [the] case warrants the intervention of this court by means of the extraordinary remedy
20 of mandamus." On September 23, 2010, the Ninth Circuit issued an Order to Show
21 Cause re Jurisdiction, directing the Plaintiffs to show cause why the matter should not
22 be dismissed for lack of jurisdiction, and authorizing Fox to file a response. Fox filed
23 its response on November 4, 2010. On November 30, the Ninth Circuit discharged the
24 OSC and directed the parties to brief the jurisdictional issue as part of their
25 submissions on appeal. Substantial briefing of the issues followed, and Fox was
26 forced to prepare for and participate in oral argument before the Ninth Circuit, with a
27 host of issues – both substantive and procedural – before the Court.

28 22. Plaintiffs' challenge on appeal to their participation in 638

1 Reference forced Fox to incur further fees in defense of the Copyright-related Claims
2 to enforce the expeditious resolution of claims envisioned by the parties' agreement to
3 638 Reference. Plaintiffs advanced a barrage of arguments, all proceeding from the
4 premise that the copyright claims prevented enforcement of the 638 Reference, that
5 Fox was required to address in briefing on the OSC re Jurisdiction and its appellate
6 brief. Fox was required to engage in legal analysis of all of the following issues
7 framed by Plaintiffs in support of their argument that the Copyright-related Claims
8 were not subject to 638 Reference:

- 9 (1) Copyright claims are beyond the 638 Reference clause because:
 - 10 a. Copyright claims arise solely under the Copyright Act and do not
11 arise out of the contract. In that connection, Plaintiffs invited the
12 District Court and Ninth Circuit to follow Plaintiffs' interpretation of
13 Second Circuit authority instead of Ninth Circuit authority to
14 determine if copyright claims arise out of a contract.
 - 15 b. The Ninth Circuit test of *Manetti-Farrow*, finding that claims arise out
16 of a contract whenever contract interpretation will be necessary to
17 adjudicate the claims, should not be followed for copyright claims or
18 should be limited.
 - 19 c. The numerous District Court cases from courts in the Ninth Circuit
20 that have applied *Manetti-Farrow* to enforce forum selection clauses
21 when disputes require contract interpretation are distinguishable or
22 should be set aside as incorrectly decided.
- 23 (2) 638 Reference cannot be enforced in federal court for copyright claims
24 because:
 - 25 a. 638 Reference is a uniquely state procedure that requires adjudication
26 by state court judges under state rules of civil procedure.
 - 27 b. The federal court has exclusive federal jurisdiction under the

1 Copyright Act that precludes 638 Reference.

2 c. A reference can only be made in federal court under Rule 53 and
3 federal law under Rule 53 precludes reference of disputes pursuant to
4 638 Reference because this results in no Article III review of the
5 parties' disputes.

6 d. Federal cases enforcing arbitration of federal claims (including
7 copyright claims) under arbitration agreements, including agreements
8 to arbitrate in accordance with Cal. Code Civ. Proc. Section 1281,
9 provide no support for enforcement of 638 Reference.

10 (3) Plaintiffs were entitled to immediate appeal of the District Court's order
11 enforcing the 638 Reference as to copyright claims because:

12 a. Granting of Fox's motion to enforce the 638 Reference will leave
13 Plaintiffs "out of court" within the doctrine of *Moses H. Cone*
14 *Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1 (1983).

15 b. The order staying proceedings in federal court and enforcing the 638
16 Reference "conclusively determined[ed] the disputed question",
17 "resolved an important issue completely separate from the merits of
18 the action" and was "effectively unreviewable on appeal from a final
19 judgment" thereby justifying immediate appeal under the collateral
20 order doctrine.

21 c. The result of the 638 Reference is effectively unreviewable because
22 the Statement of Decision must be "rubber stamped" by the District
23 Court and enforcement of the reference thus leads to impermissible
24 direct appeal to the Ninth Circuit of a decision made by the Referee.

25 d. Plaintiffs are irreversibly prejudiced by the denial of their right to jury
26 trial on copyright claims.

1 (See 9th Cir. Dkt. No. 10-56430, Dkt Entry Nos. 9 and 15.)

2 23. Fox defeated Plaintiffs' attempts to avoid 638 Reference, with the
3 Ninth Circuit dismissing their appeal in a unanimous published opinion that cleared
4 the way for the reference to proceed. *Bagdasarian Productions, LLC v. Twentieth*
5 *Century Fox Film Corp.*, 673 F.3d 1267, 1273 (9th Cir. 2012). In determining that
6 Plaintiffs had no right to appeal the order enforcing the 638 Reference, the Ninth
7 Circuit held that under the Cal. Code Civ. Proc. Sections 638 and 645, the Referee's
8 Statement of Decision "must stand as the decision of the Court . . . and . . . judgment
9 may be entered thereon in the same manner as if the action had been tried by the
10 court", and further that the Statement of Decision "may be excepted to and reviewed
11 in like manner as if made by the court." *Id.* at 1271 (quoting CCP Sections 638 and
12 645). The Ninth Circuit determined that the District Court's review of the Statement
13 of Decision would then be appealable to the Ninth Circuit and found no reason to treat
14 orders enforcing 638 Reference differently from orders enforcing agreements to
15 arbitrate (*id.* at 1273), thus effectively rejecting the principal arguments made by
16 Plaintiffs challenging enforceability of 638 Reference in federal court.

17 **II. FEES INCURRED IN DEFENSE OF OTHER BASELESS CLAIMS**

18 24. As detailed in Fox's Motion, Fox seeks an award of \$850,000 in
19 fees to compensate Fox for at least some portion of the substantial fees incurred to
20 defend against Plaintiffs' numerous baseless claims aside from the Copyright-related
21 Claims. The proposed Statement of Decision agreed to by the parties reflects that,
22 aside from the Copyright-related Claims, Plaintiffs pursued fifteen claims against Fox,
23 all of them dismissed with prejudice.

24 25. As noted, the Copyright-related Claims resulted in \$837,006 in
25 fees to Fox. Attached hereto as Exhibit 13 is a summary billing statement prepared at
26 my direction by A&B's accounting department that reflects the total fees incurred by
27 Fox in defense of Plaintiffs' claims (net of write-offs, write-downs and other
28 adjustments) from October 2009 through April 2014. Fox incurred fees over this

1 period of over [REDACTED]. Plaintiffs' pursuit of claims aside from the Copyright-
2 related Claims has thus cost Fox over [REDACTED]. The billing statements and time
3 entries associated with litigation of these issues over the five years of this litigation are
4 voluminous, and Fox has not attempted to summarize this activity with the same level
5 of detail as the Copyright-related Claims. A preparation of that detailed summary
6 would require further substantial fees and expenses. Rather, to ensure that Fox seeks
7 only a reasonable recovery of fees associated with defending Plaintiffs' other baseless
8 claims, Fox seeks an award of only \$850,000 for this activity – a fraction of the
9 amount Fox incurred.

10 26. As set forth in Fox's Memorandum of Points and Authorities in
11 support of the Motion, Fox seeks recovery of fees based on Federal Rule 37(c)(2) for
12 Plaintiffs' unjustified denial of Fox's Requests for Admission ("RFAs"), and under
13 the Court's inherent power. In Section II(a) below I describe the work required and
14 fees incurred as a result of Plaintiffs' unjustified denial of the RFAs. In Section II(b)
15 below I describe fees incurred as a result of Plaintiffs refusal to withdraw claims that
16 lacked factual or legal support, despite repeated efforts by Fox to bring the
17 deficiencies of the claims to their attention, and in Section II(c) I describe fees
18 incurred as a result of the aggressive manner in which Plaintiffs conducted the
19 litigation, including broad discovery demands and assertion of new baseless claims
20 after their primary theories were found deficient.

21 **a. Plaintiffs' Failure to Admit Fox's Request for Admissions**

22 27. On February 20, 2013, Fox served RFAs directed to Plaintiffs'
23 claims in the FAC, including the Purchase Price Claim (RFA #s 1-3), Merchandising
24 Claim (RFA #s 4-6), FX Distribution Claim (RFA # 11), *Alvin* HBO Distribution
25 Claim (RFA # 12), and the Graphic Design Services Claim (RFA #10). In each
26 instance, consistent with Federal Rule Civil Procedure 36, Fox requested that
27 Plaintiffs admit matters going to the heart of the controversy. On March 22, 2013,
28 Plaintiffs denied Fox's RFAs directed to each of those claims. Attached hereto as

1 Exhibit 14 is a true and correct copy of Plaintiffs' Responses to Fox's RFAs.

2 a. **Purchase Price Claim**

3 28. From review of the billing records, I estimate that fees associated
4 with the activities necessary to establish the merits of Fox's position on the Purchase
5 Price Claim over the period March 22, 2013 (when Plaintiffs denied the RFAs) to
6 February 11, 2014 (when the Referee granted summary judgment on this issue) was
7 on the order of \$500,000.

8 29. Among other things, over this period Fox was forced to conduct
9 substantial document review of the lengthy negotiating history and documentation of
10 the parties' Agreement, which included generating a privilege log for the numerous
11 privileged materials generated during this process. Fox served document demands on
12 Plaintiffs for materials pertaining to the negotiating history and served a document
13 subpoena on Steve Waterman, and was required to conduct review of these materials
14 as well. Fox interviewed witnesses such as Michael Ross (the Fox attorney who was
15 the principal drafter of the Agreement for Fox) and Steve Plum (the principal
16 negotiator of the Agreement for Fox) and was required to prepare both witnesses for
17 their depositions and defend that at deposition, which required substantial activity to
18 lay out the chronology and relevant document history. Fox also deposed Bagdasarian
19 in some detail on issues relating to the Purchase Price Claim, which of course required
20 substantial preparation and review of documents related to the negotiating and
21 documentation history.

22 30. Fox also responded to document discovery demands for Fox
23 "template" forms and was required to produce numerous Rights Agreements from
24 other films, which involved the time consuming step of redacting confidential
25 information not pertinent to the Purchase Price issue pursued by Plaintiffs. Fox
26 retained and began to prepare an expert to rebut any purported "custom and industry"
27 evidence purporting to construe the parties' Agreement contrary to its plain terms
28 (though Fox's consistent position was that Plaintiffs had no basis to introduce any

1 purported expert testimony seeking to vary or contradict the Agreement's
2 unambiguous terms or to opine on the parties' contractual intent).

3 31. Fox was required to pursue dispositive motions directed to the
4 Purchase Price Claim. The first was a "no evidence" summary judgment that relied
5 on Plaintiffs' admissions in their discovery responses that they had no facts, other than
6 the Agreement itself, to support their Purchase Price Claim. The Referee determined
7 that the issue should be decided on a more complete record after Plaintiffs' objected
8 that they should have further opportunity to conduct discovery into Fox's Rights
9 Agreements with third-parties (the "Marvel" issue). Once that discovery was
10 completed, Fox then moved for summary judgment based on the undisputed extrinsic
11 evidence that only confirmed the plain meaning of the Agreement, and the Referee
12 granted Fox's motion. The Referee's order granting summary judgment ("MSJ
13 Order") concluded that the "plain language of the Agreement as supported by the
14 undisputed extrinsic evidence provides that the Purchase Price is an advance for
15 sequels, as it is for the first picture." (MSJ Order, p. 11, attached hereto as Exhibit
16 15.) Plaintiffs at no time identified any admissible extrinsic evidence that would
17 support their claims, but forced Fox to incur substantial fees to establish the merits of
18 the matter.

19 ii. **Merchandising Claim**

20 32. From review of the billing records, I estimate that fees associated
21 with the activities necessary to litigate the merits of the Merchandising Claim over the
22 period March 22, 2013 (when Plaintiffs denied the RFA's) to July 9, 2013 (when
23 Plaintiffs advised they were abandoning the claim) was in the order of \$250,000.

24 33. Among other things, over this period Fox was required to conduct
25 review and organize the voluminous files on licensing and merchandising activity of
26 the *Alvin* film over the period 2004 to approximately December 2011. The document
27 base for the merchandising issue was, by volume, the largest collection of any
28 materials Fox was required to review and produce, with substantial numbers of emails

1 documenting the numerous licensing initiatives pursued by Fox with third-party
2 vendors, internal meetings and planning sessions to review the status of
3 merchandising activity, frequent exchanges with Bagdasarian over merchandising
4 activity and financial records reflecting the results of this activity. Fox interviewed
5 numerous members of the *Alvin* merchandising team to review the history of Fox's
6 merchandising activity, including Elie Dekel, the former head of Fox merchandising,
7 as well as Richard Borsini, a member of Fox's in-house legal team with responsibility
8 for merchandising issues who interfaced with Bagdasarian over the merchandising
9 activity. Fox prepared Mr. Dekel for deposition as Fox's 30(b)(6) designee before
10 Plaintiffs advised that they were abandoning the claim. The preparation required
11 significant work to review and assemble documents relating to the merchandising of
12 *Alvin*. Fox also identified, interviewed and began preparation of a merchandising
13 expert who would opine on the degree of success Fox achieved with respect to its
14 merchandising activity for *Alvin*.

15 34. Fox deposed Plaintiffs' witness Chris Minks on merchandising
16 issues, with a substantial portion of the deposition focused in this area. Fox also
17 incurred fees to respond to document demands in which Plaintiffs sought to compel
18 Fox to produce voluminous documents on licensing and merchandising activity
19 conducted by Fox on completely separate projects, resulting in Joint Statement
20 activity to bring this issue before the Referee. Fox interviewed merchandising experts
21 to develop testimony, should the claim go forward.

22 35. Having denied Fox's RFAs and forced Fox to incur fees for all of
23 these activities, on July 9, 2013, by virtue of their motion for leave to amend the FAC
24 and in their proposed Second Amended Complaint ("SAC"). Plaintiffs advised they
25 were abandoning the claim. Under the proposed Statement of Decision, the
26 Merchandising Claim is dismissed with prejudice. Fox has fully prevailed, but was
27 forced to incur substantial fees before Plaintiffs acknowledged the claim had no merit.

28 //

1 iii. **FX Distribution Claim**

2 36. From review of the billing records, I estimate that fees associated
3 with the activities necessary to establish the merits of Fox's position on the FX
4 Distribution Claim over the period March 22, 2013 (when Plaintiffs denied the RFAs)
5 to July 30, 2013 (when Plaintiffs abandoned the claim in response to Fox's motion for
6 summary judgment) was on the order of \$125,000.

7 37. Among other things, over this period Fox was required to conduct
8 factual investigation and witness interviews into the background of Fox's "free-TV"
9 licensing activity for the *Alvin* film. This included meetings with Jodie Rea, Senior
10 Vice President of Sales and Credit Administration for Twentieth Television, Inc., who
11 ultimately served as Fox's 30(b)(6) witness on this issue. Fox was required to prepare
12 Ms. Rea for her deposition and to defend the deposition. Fox was required to produce
13 substantial documents that detailed, not only Fox's efforts to license the *Alvin* film,
14 but license agreements for other films in the two-year period surrounding the release
15 of *Alvin*. This included time-consuming activity to redact confidential information not
16 pertinent to the issues raised by Plaintiffs about the licensing activity. Fox incurred
17 fees to participate in briefing of Joint Statement positions on the range and scope of
18 license agreements it was required to produce. Fox also identified and began
19 preparation of an expert regarding licensing of theatrical films to free and basic cable
20 television outlets.

21 38. Fox produced documents substantiating Fox's position that the
22 license arrangement Fox achieved for *Alvin* was the most lucrative license deal
23 available for the picture, and that Fox secured this arrangement with FX after
24 numerous other potential licensees passed on the film. Fox produced documents
25 substantiating Fox's position that the license fees for *Alvin* were not just comparable
26 to, but more favorable than, license fees Fox obtained for similar films. In April 2013,
27 Fox gave notice that it would move for summary judgment on the FX Distribution
28 Claim, noting the complete absence of evidence to support Plaintiffs' claims. Fox

1 invited Plaintiffs to withdraw the claim, thus avoiding the necessity of further fees and
2 expenses on the matter. Plaintiffs refused to dismiss, forcing Fox to move for partial
3 summary judgment. Then, in their opposition papers filed on July 30, 2013, Plaintiffs
4 advised they were not contesting summary judgment. The claim is dismissed with
5 prejudice in the Statement of Decision.

6 **iv. HBO Distribution Claim**

7 39. From review of the billing records, I estimate that fees associated
8 with the activities necessary to establish the merits of Fox's position on the HBO
9 Distribution Claim over the March 22, 2013 (when Plaintiffs denied the RFAs) to
10 February 14, 2014 (when the Referee granted Fox's motion for summary judgment)
11 was on the order of \$150,000.

12 40. Among other things, over this period Fox was required to conduct
13 review for documents bearing on Fox's decision to co-finance the *Alvin* picture,
14 including financial analysis of co-financing scenarios and the risks to Fox of
15 proceeding without financing. Fox incurred fees to develop and execute a stipulation
16 regarding the difference in Plaintiffs' participation between distribution under the Fox
17 and New Regency agreements for HBO distribution. Fox pursued discovery from
18 Plaintiffs to determine the basis, if any, for this claim. Fox deposed Bagdasarian on
19 this issue, and Fox's in-house counsel, Jonathan Gottlieb, deposed George Calvelli,
20 Plaintiff's auditor. Fox incurred fees to prepare for and take the Bagdasarian
21 deposition and with respect to Mr. Calvelli's deposition, A&B was required to gather
22 the relevant documents for Mr. Gottlieb's review and assisted him to prepare for the
23 deposition. Fox interviewed Fox's former Chairman Tom Rothman regarding the
24 history of the co-financing decision and defended him at his deposition. Fox was
25 required to move for dismissal of the HBO Distribution Claim on summary judgment,
26 which included responding to BPL's baseless cross-motion for summary judgment on
27 this issue.

28 41. In the order granting Fox's motion for summary judgment on the

1 HBO claim the Referee determined that BPL’s “discrimination” claim was untenable
2 because Fox and BPL “are not similarly situated as only Fox faced the risk of \$60
3 million in losses” from an unsuccessful film and that the “co-financing decision
4 resulted in diminished HBO revenue that impacted both BP and Fox.” (Ex. 15, MSJ
5 Order at 21.) These facts were known to Plaintiffs from the outset of the litigation.
6 Plaintiffs at no time introduced any evidence to support their claim that Fox’s co-
7 financing decision was discriminatory towards BPL.

v. Graphic Design Services Claim

9 42. From review of the billing records, I estimate that fees associated
10 with the activities necessary to establish the merits of Fox's position on the Graphic
11 Design Services Claim over the March 22, 2013 (when Plaintiffs denied the RFAs) to
12 February 14, 2014 (when the Referee granted Fox's motion for summary judgment)
13 was on the order of \$125,000.

14 43. Among other things, over this period Fox conducted document
15 review into the development of the Chipette graphic designs and CGI characters.
16 Documents were gathered from Fox's files as well as from files of Rhythm & Hues,
17 the third-party vendor who developed the CGI images. Relevant documents were also
18 reviewed from materials subpoenaed from Steve Waterman and Deborah Ann Hayes.
19 Fox was required to produce contracts entered into with graphic artists such as Buck
20 Lewis who worked on graphic designs for the chipmunk characters in the first Alvin
21 film. Fox conducted interviews with numerous witnesses, including Christina
22 Garberson, Vice President in the Visual Effects Department of Fox, who served as
23 Fox's 30(b)(6) witness on this issue. Fox incurred fees to prepare the witness for
24 deposition and to participate in the deposition.

25 44. Fox deposed both Bagdasarian and Karman on the graphic design
26 issues, and defended depositions of Fox witnesses such as Elizabeth Gabler, to whom
27 Plaintiffs directed inquiries regarding the graphic designs. Fox exchanged with
28 Deborah Ann Hayes, the graphic artist that Karman retained (unbeknownst to Fox) for

1 approximately \$6400 to prepare pencil sketches of the Chipettes. Fox incurred fees to
2 defend against Karman's baseless motion for partial summary judgment directed to
3 this issue, and to pursue Fox's successful motion for summary judgment. This
4 briefing included legal analysis to rebut Plaintiffs' assertion to the Referee that, in
5 considering an implied contract claim, "bilateral intent is beside the point" in deciding
6 whether there is a basis to recover. (JAMS Dkt No. 7849; Plaintiffs' Opposition to
7 Fox's Motion for Summary Judgment, at 28:15-16.) In dismissing this claim, the
8 Referee determined that "Karman's implied contract claim based on her graphic
9 designs fails as a matter of law." (Ex. 15, MSJ Order at 28.) The Referee noted the
10 absence of any evidence that Fox knew Karman had provided Chipette artwork to
11 Rhythm & Hues until August 2008 (*Id.*), and further, that Karman failed to show any
12 bilateral intent to compensate her for any such purported services. (Ex. 15, MSJ
13 Order at 29.)

14 45. In sum, the fees associated with establishing the merits of matters
15 and otherwise prevailing on claims for which Plaintiffs denied Fox's RFAs are as
16 follows:

Claim	Fees
Purchase Price	\$500,000
Merchandising	\$250,000
FX Distribution	\$125,000
HBO Distribution	\$150,000
Graphic Design Services	\$125,000

23
24 **b. Plaintiffs' Failure to Withdraw Meritless Claims After Meet and**
25 **Confer Activity**

26 46. Fox incurred substantial fees to defend claims whose fundamental
27 deficiencies were repeatedly brought to the attention of Plaintiffs' counsel in meet and
28 confer exchanges, briefing and other exchanges. As noted above, Fox initially

1 advised Plaintiffs of the deficiencies in their claims in its pre-litigation letter of
2 December 9, 2009. *See Exhibit 6.* After document discovery had been substantially
3 completed in March 2013 (except for Plaintiffs later disclosure that they had not even
4 reviewed an additional 10,000 documents, resulting in a suspension of the
5 proceedings), on April 5, 2013, I sent a letter to Mr. Marenberg advising of Fox's
6 intent to promptly move for summary judgment and/or partial summary judgment on
7 the remaining claims. In the letter, attached hereto as Exhibit 16, Fox detailed why
8 Plaintiffs' remaining claims lacked factual support and further advised that "our initial
9 review of documents produced by Plaintiffs in this matter suggests that Plaintiffs have
10 pursued claims not only lacking in factual basis, but contrary to the facts known to
11 Plaintiffs even before filing suit." I invited "Plaintiffs to re-examine their course and
12 dismiss the [remaining claims] detailed [in the letter] that lack[ed] factual support and
13 that [were] contrary to the parties' Agreement."

14 47. On April 18, 2013, I sent another letter to Mr. Marenberg detailing
15 the infirmities with Plaintiffs' claims. I advised that "on more than one occasion
16 [Fox] invited Plaintiffs to drop [their] unsupported claims, most recently with
17 particular attention to Plaintiffs' Responses and Amended Disclosures that attest to the
18 lack of adequate basis to proceed." In the letter Fox again reserved "all rights to
19 recover fees and expenses . . . resulting from Plaintiffs' continued prosecution of
20 [their] baseless claims." Attached hereto as Exhibit 17 is a true and correct copy of
21 my April 18, 2013 correspondence.

22 48. The following are examples of deficiencies Fox identified in the
23 April 5, 18 and other exchanges with Plaintiffs' counsel:

24 **i. Purchase Price Claim**

25 49. As noted, in December 2009, Fox detailed the deficiencies of this
26 claim in written correspondence to Plaintiffs' counsel. Specifically, Fox emphasized
27 that the plain language of the Agreement (paragraphs 6, 7 and 12) defeated the claim
28 because the Purchase Price is deemed an advance "[f]or each Picture." (Ex. 6.) In

1 April 2013, after receiving Plaintiffs' discovery responses that stated the sole basis for
2 Plaintiffs' claim was the language of the Agreement, Fox again asked Plaintiffs to
3 dismiss the claim. Ex. 16. On April 18, 2013, Fox again advised Plaintiffs that in
4 light of Plaintiffs' failure to identify any evidence in support of their Purchase Price
5 claim, it should be dismissed, and failing that, Fox would move for summary
6 judgment. Ex. 17.

7 50. On July 8, 2013, after receiving Waterman's documents pursuant
8 to Fox's subpoena, Fox pointed out to Plaintiffs' counsel that admissions in these
9 documents demonstrated that Plaintiffs understood in 2008 and 2009 that the Purchase
10 Price was an advance for sequels. These documents included an email from
11 Bagdasarian, attached hereto as Exhibit 18, where, in contravention to Plaintiffs'
12 position that the contract required Fox to pay an additional \$3 million for sequels in
13 the form of a non-recoupable advance, he directed Waterman to determine if Fox
14 should pay more for sequels: "if they did [in connection with another picture], and it
15 wasn't called for in the contract, then that is something that they are used to doing and
16 they should do it for us." We advised that, in Fox's view, there was no good faith
17 basis to proceed on the claim. A true and correct copy of my letter to Plaintiffs'
18 counsel is attached hereto as Exhibit 19.

19 51. In the "no evidence" motion for partial summary judgment filed by
20 Fox on June 28, 2013, Fox identified undisputed extrinsic evidence showing that both
21 parties understood that the Purchase Price was an advance for each picture (Ex. 20),
22 including Waterman's written confirmation to Fox in November 21, 2003 that the
23 Purchase Price would be an advance against Plaintiffs' profit participations (Ex. 21.)
24 Attached hereto as Exhibit 20 and 21, respectively, are true and correct copies of a
25 letter from Steve Plum, Fox's chief negotiator over the terms of the Agreement, to
26 Waterman confirming the parties' understanding that the Purchase Price is deemed an
27 advance against profit participations based on "first dollar gross" and Waterman's
28 written confirmation in response. Further, Fox produced its "template" forms that

1 only confirmed Fox's practice that the Purchase Price is a recoupable advance
2 whenever Contingent Compensation is based on "first dollar gross."

3 52. As noted, the Referee ultimately concluded that the "plain
4 language of the Agreement as supported by the undisputed extrinsic evidence provides
5 that the Purchase Price is an advance for sequels, as it is for the first picture." (Ex. 15,
6 MSJ Order at 11.) Even after Fox identified the undisputed extrinsic evidence in
7 Fox's first motion for summary judgment, Plaintiffs opposed dismissal and required
8 Fox to engage in further litigation of the issue, without ever identifying any contrary
9 evidence. Plaintiffs' litigation over the Purchase Price issue boiled down to
10 Bagdasarian's claim of undisclosed, subjective intent that the Purchase Price would be
11 treated as non-recoupable for sequels – evidence that is inadmissible as a matter of
12 law in interpreting contracts.

13 **ii. Merchandising Claim**

14 53. In my December 7, 2009 letter to Plaintiffs' counsel, Fox noted
15 that the merchandising claims must fail because Fox had no obligation to conduct any
16 merchandising and possessed sole discretion with respect to the merchandising
17 licenses. Ex. 6. In response to Fox's interrogatories seeking to discover the basis for
18 Plaintiffs' claim, Plaintiffs asserted that Fox's liability was predicated on the failure to
19 timely prepare a Style Guide during merchandising for the first *Alvin* film. In our
20 letter to Plaintiffs' counsel dated April 5, 2013, Fox noted the absence of any facts to
21 support Plaintiffs' claim that Fox was obligated under the Agreement or any implied
22 covenant of good faith and fair dealing to prepare a Style Guide. Ex. 16. Fox further
23 noted the absence of any facts, dates, individuals or specifics to support any claim that
24 Fox promised to prepare a Style Guide at all or by any particular date. In addition,
25 Fox noted that Plaintiffs had provided no evidence of any damages resulting from any
26 purported failure to prepare a Style Guide in a timely manner.

27 54. In our April 18 letter to Plaintiffs' counsel, Fox pointed out again
28 that Plaintiffs lacked any evidence that Fox had breached any implied obligations that

1 could survive the express terms of the Agreement that Fox had no obligation to
2 conduct merchandising, and Fox again invited Plaintiffs to drop the claim. Ex. 17.
3 Fox expressly reserved all rights to recover fees and expenses if Plaintiffs continued to
4 prosecute the claim.

5 55. During discovery, Plaintiffs produced an e-mail authored by Ross
6 Bagdasarian on April 27, 2007 in which he stated that in light of the December 2007
7 release date for the film, there was inadequate time to prepare a Style Guide and that
8 Fox should instead push forward with plans for plush dolls. Ruga Dec., Ex. 28. In
9 July 8, 2013, Fox sent a letter to Plaintiffs' counsel noting that documents produced
10 by Waterman contained admissions that Bagdasarian was pursuing his claims for
11 additional compensation because Fox refused to renegotiate the merchandising terms
12 of the Agreement. (Ex. 19; *see also* Ruga Dec., Ex. 9.)

13 56. After Fox incurred substantial fees to conduct discovery and
14 litigate the Merchandising Claim, Plaintiffs abandoned the claim in their proposed
15 SAC filed on July 9, 2013. Plaintiffs never identified any evidence to support their
16 assertion that Fox breached implied obligations to prepare a Style Guide and pursued
17 this claim in the face of admissions that Bagdasarian did not believe Fox should
18 prepare any Style Guide.

19 **iii. FX Distribution**

20 57. Fox's April 5, 2013 letter (Ex. 16) identified the absence of facts to
21 support the FX Distribution claim. Specifically, Fox noted there was no evidence that
22 any free TV network was willing to license *Alvin* for more than FX, there were no
23 facts to suggest that the terms of Fox's license with FX were not comparable to deals
24 entered with unrelated third-parties, and no facts to show any violation of Section
25 VIII(BB)(4) of Exhibit A to the ST&C (prohibiting "discriminatory" decisions). On
26 April 18, 2013, Fox again pointed out that Fox's documents showed that Fox's license
27 of *Alvin* to FX was not just fair and reasonable, but the most advantageous business
28 opportunity available to the company. Ex. 17.

1 58. Fox requested that Plaintiffs provide any information in their
2 possession that could preclude summary judgment on this claim. *Id.* Plaintiffs
3 provided no evidence, but refused to dismiss, requiring Fox to file its motion for
4 partial summary judgment directed to this issue on July 5, 2013. In response to the
5 motion, Plaintiffs abandoned the claim. Fox was required to incur fees to seek
6 dismissal of a claim that Plaintiffs abandoned only after forcing Fox to file a motion
7 for summary judgment.

iv. HBO Distribution

9 59. In the April 5 letter (Ex. 16), Fox advised it would move for
10 partial summary judgment because of the complete absence of facts to support a claim
11 that Fox breached the Agreement with respect to HBO distribution. Fox pointed out
12 that the Agreement affords Fox complete, exclusive and unqualified control of film
13 distribution, in accordance with Fox's sole business judgment, subject only to Fox
14 acting in a reasonable and non-discriminatory basis. Fox noted there were no facts to
15 suggest Fox had breached this standard; in particular, there was no evidence that the
16 co-financing decision was unreasonable or discriminatory. In the April 18 letter (Ex.
17 17), Fox further pointed out that Fox and Plaintiffs shared in the same revenue stream
18 of the HBO/New Regency distribution arrangement. We advised that the claim was
19 ripe for summary adjudication.

20 60. On August 22, 2013, during the deposition of Bagdasarian, he
21 testified that “[s]tudios frequently co-finance pictures,” that “Fox’s decision to co-
22 finance [*Alvin* and *The Squeakquel*] without more, is not discriminatory”, and if BPL
23 was paid according to the Agreement then “co-financing in and of itself is not the
24 issue.” (Ruga Dec., ¶18, Ex. 18, Bagdasarian Depo. at 359:5-19.) On November 13,
25 2013, Plaintiffs took the deposition of Fox Chairman Tom Rothman, who confirmed
26 the reasons for the co-financing decision were based on mitigation of risk, and had
27 nothing to do with Plaintiffs. Plaintiffs still refused to dismiss, resulting in Fox’s
28 motion for summary judgment directed to this issue, granted by the Referee on

1 February 11, 2014.

2 61. The Referee determined that BPL’s “discrimination” claim was
3 untenable because Fox and BPL “are not similarly situated as only Fox faced the risk
4 of \$60 million in losses” from an unsuccessful film and that the “co-financing
5 decision resulted in diminished HBO revenue that impacted both BP and Fox.” (Ex.
6 15, MTD Order at 21.) These facts were known to Plaintiffs from the outset.
7 Plaintiffs never identified any evidence to suggest that Fox’s co-financing decision
8 was unreasonable or discriminatory.

9 **v. Soundtrack Claims**

10 62. In the April 5, 2013 letter (Ex. 16), Fox advised Plaintiffs that the
11 Agreement on its face provides that payment of royalties for soundtrack sales is based
12 on “net” sales and that there were ample admissions in the documents that soundtrack
13 royalties were subject to deductions. Fox further advised it would move for summary
14 adjudication of this issue. On July 8, 2013, I sent a letter to Mr. Marenberg
15 memorializing Fox’s objection to Plaintiffs’ continued pursuit of any soundtrack
16 claim. (Ex. 19.) In this letter I identified specific evidence that contradicted the *Alvin*
17 Soundtrack Claim alleged in the FAC, including Bagdasarian’s email exchange with
18 Fox attached hereto as Exhibit 23 that recognizes deductions being taken under the
19 Agreement. I further detailed why the language of the Agreement and other evidence
20 demonstrated that any proposed amendment to add a soundtrack claim pertaining to
21 *The Squeakquel* would be futile. My letter highlighted the requirements of Rule 11
22 and expressed Fox’s position that Plaintiffs could have no “good faith basis” to
23 proceed on any soundtrack claim given the evidence of record. Fox further reserved
24 all rights in the event Plaintiffs intended on pursuing the soundtrack claims.

25 63. The Referee dismissed the Soundtrack Claims for the very reasons
26 Fox identified to Plaintiffs’ counsel: deductions are required by the Agreement and
27 Plaintiffs’ performed the contract with that understanding. In granting summary
28 judgment, the Referee found that “BP’s Soundtrack Royalties are subject to all

1 deductions applicable under Fox's contract with the Record Company." (Ex. 15, MSJ
2 Order at 18-19.) Plaintiffs never identified any evidence to support their claim that
3 deductions were impermissible.

4 64. From review of the billing records, I estimate that fees associated
5 with the activities necessary to litigate the soundtrack claims was on the order of
6 \$350,000. Among other things, Fox was required to defend Tom Cavanaugh at
7 deposition (twice) on soundtrack issues. Fox was required to engage in multiple
8 discovery disputes over soundtrack documents demanded by Plaintiffs, and required
9 to move to compel Plaintiffs to produce their soundtrack album documents. Fox
10 opposed Plaintiffs' attempt to add soundtrack claims to their proposed SAC. Fox
11 incurred fees to move for summary judgment, including responding to the baseless
12 cross-motion for summary judgment filed by Plaintiffs. In that regard, Fox was
13 required to object to Plaintiffs' surprise reliance on expert testimony in support of
14 their summary judgment motion. Fox also retained and began to prepare its own
15 soundtrack expert in the event the claim went forward.

16 **vi. Graphic Design Claim:**

17 65. My April 5, 2013 letter (Ex. 16) detailed for Plaintiffs that their
18 discovery responses provide no specific information concerning the dates, events or
19 particular transactions that purportedly gave rise to this purported implied contract
20 claim. Fox advised it would move for summary judgment because of the absence of
21 any evidence to support the claim. On April 18, 2013 (Ex. 17), Fox reiterated its
22 position. Plaintiffs provided no further discovery responses, and Fox was ultimately
23 required to move for summary judgment, resulting in dismissal of the claim. As noted,
24 the Referee determined that "Karman's implied contract claim based on her graphic
25 designs fails as a matter of law" and was unsupported by any evidence that Fox knew
26 Karman had provided Chipette artwork to Rhythm & Hues until August 2008. (Ex.
27 15, MTD Order at 29.) All of these facts were known to Plaintiffs from the outset.
28

///

vii. **Rescission Claim**

2 66. Fox did not have an opportunity to meet and confer with Plaintiffs
3 over the proposed rescission claim because Plaintiffs identified it for the first time in a
4 proposed SAC filed on July 9, 2013. Had Plaintiffs met and conferred, Fox would
5 have identified the numerous deficiencies in this claim detailed in Fox's subsequent
6 motion opposing leave to file the SAC. The Referee denied Plaintiffs' leave to amend
7 to add the rescission claim for reasons advanced by Fox in its opposition papers. The
8 Referee noted that Bagdasarian's alleged misunderstanding of the Agreement's
9 meaning "does not equate to a mistake as that legal term is used" and thus leave to
10 amend to add the claim was not warranted because the "claim for rescission cannot be
11 properly plead and therefore is futile." (Ex. 24 at 9-10.) Attached hereto as Exhibit
12 24 is a true and correct copy of the Referee's order denying Plaintiffs leave to amend
13 to add the rescission claim. Plaintiffs' failure to meet and confer over the claim
14 resulted in further fees and costs to oppose a meritless claim. Notably, Plaintiffs
15 pursued this new rescission theory and other newly asserted claims in the SAC in an
16 effort to prolong the proceedings after Fox's motion for partial summary judgment
17 directed to the Purchase Price claim detailed the infirmities of that claim.

c. Plaintiffs' Aggressive Litigation Tactics

19 67. While refusing to dismiss claims lacking factual or legal support,
20 Plaintiffs pursued aggressive discovery against Fox on all of their claims. Plaintiffs'
21 claims and their document requests touched on nearly every aspect of the studio, from
22 the negotiations relating to the Agreement to the development, production,
23 distribution of the *Alvin* film, and to the development and production of *The*
24 *Squeakquel*, in addition to merchandising activity, free-TV and pay-TV distribution
25 activity, co-financing decisions, and soundtrack business affairs. Because separate
26 divisions within Fox perform these different functions, the litigation that Plaintiffs
27 prosecuted was tantamount to five or six different suits against different business
28 divisions, vastly multiplying the cost. Plaintiffs' tactics included overbroad document

1 production demands and multiple motions to compel that required Fox to participate
2 in repeated Joint Statement activity.

3 68. At the outset of the case, Plaintiffs served voluminous document
4 discovery demands seeking 56 different categories of documents that cut across wide
5 areas of Fox's business operations. Ultimately, Fox produced over 3,195 documents
6 totaling no less than 16,045 pages, with 596 entries on a privilege log. Fox was also
7 required to review documents produced by Plaintiffs and third-parties in response to
8 subpoenas, including Razor & Tie, Rhythm & Hues, Deborah Ann Hayes, and Steve
9 Waterman.

10 69. Plaintiffs served supplemental document discovery demands in
11 December 2012 and April 2013 and ultimately served a total of 84 document requests
12 directed to Fox through the course of the litigation. These supplemental requests
13 sought information relating to Fox's soundtrack album distribution for each of the
14 three Alvin films (even though the soundtrack claim in the Complaint was directed
15 only to the *Alvin* film) and information pertaining to Fox's activities (e.g., licensing
16 and merchandising revenue, style guides, and pay television revenue) in connection
17 with unrelated films. .

18 70. When Fox objected to producing the overbroad materials
19 demanded by Plaintiffs, Plaintiffs increased the cost of the litigation by aggressively
20 pursuing motions to compel. Plaintiffs brought a motion to compel demanding the
21 production of the merchandising information for other films. The Referee denied
22 Plaintiffs' motion directed at the merchandising issues concluding that the information
23 and agreements requested "are not relevant to the issued in the case or reasonably
24 calculated to lead to the discovery of admissible evidence." The Referee further noted
25 that "introduction into the discovery process of third party marketing and licensing
26 efforts for other films would also result in a burdensome, time consuming, costly, and
27 unwarranted expansion of discovery in this case...." (Referee's Rulings on
28 Discovery Issues Joint Statement Dated May 28, 2013, at 1.)

1 71. Fox was required to participate in three Joint Statements on
2 motions to compel pursued by Plaintiffs. Plaintiffs succeeded in using the broad
3 discovery provisions of the Federal Rules to burden Fox with discovery that had no
4 ultimate bearing on the dispositive issues. On the Merchandising Claim, Plaintiffs
5 moved to compel Fox to produce “ultimates,” claiming this material was pertinent to
6 determine whether Fox pursued merchandising in good faith, even after Fox
7 confronted Plaintiffs with admissions in their own documents that Bagdasarian had
8 urged Fox not to pursue a Style Guide, contradicting the claimed premise of this
9 claim. On the Purchase Price Claim, Plaintiffs moved to compel Fox to produce third-
10 party contracts containing sequel provisions, requiring Fox to engage in extensive
11 redaction activity to protect the confidential terms of these deals, with this exercise
12 providing no information (as Fox told Plaintiffs from the beginning it would not)
13 supporting Plaintiffs’ arguments on the Purchase Price Claim and only confirming the
14 testimony given by Mr. Plum at his deposition about sequel pictures. On the HBO
15 Distribution Claim, Plaintiffs moved to compel Fox to produce its agreement with
16 Regency Entertainment, another highly confidential Fox document for which
17 redactions were necessary to protect information completely irrelevant to this suit,
18 even after Fox provided a verified statement showing the difference in distribution
19 revenue under the Fox and Regency distribution arrangements with HBO. Further, on
20 the FX Distribution Claim, Plaintiffs moved to compel Fox to produce information on
21 Fox’s licensing activities on other films over a two year period, yet again requiring
22 Fox to engage in redactions to protect the confidential terms of these third-party
23 contracts, only to then abandon the claim when Fox moved for summary judgment.

24 72. Fox had to file two of its own motions due to Plaintiffs’
25 insufficient responses and document productions. The first motion was directed in
26 part to Plaintiffs’ refusal to produce documents relating to their actual or contemplated
27 efforts to exploit their Classic Alvin characters during the same time period that Fox
28 was merchandising for *Alvin*. The Referee granted Fox’s motion to compel by

1 ordering Plaintiffs to produce the merchandising related documents for the time period
2 January 2006 through December 2008.

3 73. The second motion to compel Fox filed was directed to Plaintiffs'
4 insufficient interrogatory responses, their insufficient Rule 26(a) initial disclosure
5 relating to damages, and their refusal to produce soundtrack related documents after
6 they asserted the claim. The Referee ordered Plaintiffs to provide further Rule 26
7 disclosures "that comply with the requirements of FRCP 26(a)(1)(A)(iii), and
8 specifically provide a computation of each category of damages claimed by
9 Plaintiffs." The Referee further ordered Plaintiffs to produce the agreements
10 identified in Fox's requests.

11 74. After being advised that Fox inadvertently produced certain
12 privileged communications, Plaintiffs' counsel further reviewed and analyzed the
13 subject communications and refused to destroy or return the documents despite Fox's
14 prompt clawback request. This resulted in a further motion by Fox relating to
15 Plaintiffs' counsel's inappropriate review of privileged materials.

16 75. Plaintiffs failed to satisfy other discovery obligations. As detailed
17 by Fox in prior submissions (JAMS Dkt. Nos. 6849-6855, 7088, 7089), Plaintiffs
18 produced voluminous garbled AOL emails lacking dates or meta data that resulted in
19 substantial additional fees to Fox to sort through the materials. In May 2013, after the
20 deadline to produce documents had passed, Plaintiffs disclosed that they had failed to
21 review over 10,000 documents, resulting in the immediate suspension of proceedings
22 and further fees to Fox to determine the nature and extent of Plaintiffs' discovery
23 failures. Fox ultimately was required to bring on a motion directed to Plaintiffs'
24 spoliation of evidence, with the Referee agreeing that "Plaintiffs failed to meet their
25 duty to preserve documents" because they only began formal preservation efforts in
26 August 2010, four months after they filed suit and almost a year after their
27 preservation duty attached. Indeed, it was later determined that Plaintiffs imaged their
28 company hard drives only a year after they filed suit. The Referee concluded that

1 "Plaintiffs' actions were not consistent with broad preservation obligations."
2 Attached hereto as Exhibit 25 is a true and correct copy of the Referee's Order on
3 Fox's Motion for targeted discovery.

4 76. Plaintiffs were equally aggressive in their deposition activity. Fox
5 was required to prepare for and defend eleven separate depositions of nine witnesses
6 who are/were employed by Fox: Erin Siminoff, Thomas Cavanaugh, Stephen Plum,
7 Michael Ross, Elizabeth Gabler, Jodie Rea, Karen Rosenfelt, Tom Rothman and
8 Christina Garberson. Fox prepared for and took depositions of Plaintiffs' three
9 principal witnesses, Chris Minks, Karman, and Bagdasarian. Fox also took the
10 deposition of Plaintiffs' auditor, George Calvelli.

11 **III. FEES ASSOCIATED WITH FOX'S MOTION FOR ATTORNEYS'**
12 **FEES AND COSTS**

13 77. I have reviewed the original billing statements A&B has prepared
14 for issuance to Fox over the period March 3, 2014 through May 23, 2014 and have
15 determined that Fox incurred no less than \$100,000 in fees in connection with the
16 preparation and filing of Fox's Motion as it pertains to recovery of defense fees
17 incurred in connection with defense of the Copyright-related Claims.

18 78. One reason the Motion has required this level of fees was the need
19 to review the lengthy billing records, make appropriate redactions, calculate and
20 allocate fees attributable to various categories and detail the services provided by
21 A&B in defense of the Copyright-related Claims as shown on Exhibits 1 to 4. I
22 anticipate that A&B will spend an additional \$35,000 to review Plaintiffs' Opposition
23 papers and to prepare a Reply, resulting in Fox incurring approximately \$135,000 in
24 fees, not including any time associated with a hearing of the matter, to prosecute the
25 Motion seeking recovery of fees incurred in defense of Copyright-related Fees.

26 79. Fox engaged in repeated meet and confer activity to avoid the
27 necessity for this Motion. On May 21, 2014, I participated in a telephone call with
28 Plaintiffs' counsel Steve Marenberg and Doug Dixon where I outlined Fox's

1 anticipated Motion and provided information on the range of fees and costs Fox was
2 pursuing: a total of about \$850,000 in fees on the Copyright-related Claims, with
3 about \$375,000 directed to activity not involving the 638 Reference issue, and
4 \$475,000 directed to the 638 Reference issue. I further advised that Fox would be
5 seeking attorneys' fees for Plaintiffs' bad faith pursuit of other claims, in an amount
6 not then fully determined, but anticipated to be in the range of \$1 million (as detailed
7 herein, Fox has restricted its claim for fees in this area to only \$850,000). Thereafter,
8 on May 21, 2014 we sent a letter to Plaintiffs' counsel identifying the factual and legal
9 basis for Fox's motion. A true and correct copy of that letter is attached hereto as
10 Exhibit 26. In that letter, we invited Plaintiffs to further meet and confer and to advise
11 if there was any amount of fees and costs they were prepared to pay in order to
12 obviate the necessity of Fox's Motion. Plaintiffs never responded to that inquiry. In
13 their May 29, 2014 response to Fox's May 21 letter, Plaintiffs did not even respond to
14 Fox's position that it is entitled to fees under Section 505 of the Copyright Act and
15 Rule 37(c)(2). Attached hereto as Exhibit 27 is Plaintiffs' response.

16 80. In response to Plaintiffs' letter, Fox sent Plaintiffs another letter on
17 May 30, 2014 requesting that Plaintiffs meaningfully meet and confer over the
18 attorneys' fees issues. Attached hereto as Exhibit 28 is a true and correct copy of the
19 May 30, 2014 letter. In response, Plaintiffs' counsel stated that the parties should
20 "proceed to briefing the issues instead of swapping letters back and forth...."
21 Attached hereto as Exhibit 29 is a true and correct copy of the June 3, 2014 letter from
22 Plaintiffs' counsel.

23 81. The parties' meet and confer exchanges resulted in streamlining
24 one issue: Plaintiffs agree they do not intend to dispute the reasonableness of the rates
25 charged by A&B for any of the attorneys who provided services to Fox over the 2009
26 to 2014 period (including me, Ms. Capoccia, Ms. Ruga, Mitra Eskandari-Azari, Grace
27 Kang Shaywitz and Evan Woolley). See Ex. 27. Further, Plaintiffs also confirmed
28 that they do not intend to challenge the reasonableness of the hourly rates of A&B's

1 paralegals and case assistants who worked on the matter (Donna Reznick, Alexis
2 Fierro, Roxanne Moreno and Shermie Villar), except that Plaintiffs reserved the right
3 to challenge the reasonableness of paralegal rates depending on the tasks they
4 performed. See Ex. 29. For avoidance of doubt, I declare that the rates charged to
5 Fox for the services which are the subject of this Motion are, based on my
6 participation in entertainment industry and commercial litigation activity over the past
7 30 years, well within the reasonable range of rates charged by attorneys, paralegals
8 and case assistants in the community for comparable matters.

9 **IV. COSTS INCURRED DEFENDING AGAINST PLAINTIFFS'**
10 **CLAIMS**

11 82. Concurrently with this Motion, Fox has submitted an Application
12 to Tax Costs and Proposed Bill of Costs. The total taxable costs incurred by Fox are
13 \$89,418.01. *See* Declaration of Casondra K. Ruga filed in support of Application to
14 Tax Costs ("Ruga Dec. re: Costs").

15 83. In addition to its taxable costs, Fox also incurred costs that are
16 non-taxable under Rule 54 of the Federal Rules of Civil Procedure (including
17 postage/mail costs and photocopying costs during the time period October 6, 2009
18 through December 3, 2012) attributable to the Copyright-related Claims in an amount
19 of \$7,469.72. (Ruga Dec. re: Costs, ¶3, Ex. I.) Fox seeks recovery of these fees under
20 Section 505 of the Copyright Act.

21 84. In sum, the total amount of fees and costs that Fox seeks in
22 connection with its defense of this lawsuit is as follows:

Copyright-related Claims	\$837,006
All other Claims	\$850,000
Preparation of Motion	\$135,000
Taxable Costs Under Rule 54(d)	\$89,418.01
Non-Taxable Costs under Section 505	\$7,469.72

	Total	\$1,918,893.70
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of June 2014, in Los Angeles, California.

/s/ Louis A. Karasik
Louis A. Karasik

EXHIBIT 1 FILED UNDER SEAL

(Pgs. 40 – 85-12)

EXHIBIT 2

Biller	Hourly Rate	Total Hours & Fees in Defense of Copyright-related Claims								
LOUIS KARASIK CASONDRA RUGA DONNA REZNICK	[REDACTED]	<table border="1"><thead><tr><th colspan="2">10-2009 to 12-2009</th></tr><tr><th>Hours</th><th>Fees</th></tr></thead><tbody><tr><td>[REDACTED]</td><td>[REDACTED]</td></tr><tr><td>Totals:</td><td>\$37,773</td></tr></tbody></table>	10-2009 to 12-2009		Hours	Fees	[REDACTED]	[REDACTED]	Totals:	\$37,773
10-2009 to 12-2009										
Hours	Fees									
[REDACTED]	[REDACTED]									
Totals:	\$37,773									
LOUIS KARASIK RACHEL CAPOCCIA CASONDRA RUGA MITRA ESKANDARI ROXANNE MORENO DONNA REZNICK ALEXIS FIERRO SHERMIE VILLAR	[REDACTED]	<table border="1"><thead><tr><th colspan="2">1-2010 to 12-2010</th></tr><tr><th>Hours</th><th>Fees</th></tr></thead><tbody><tr><td>[REDACTED]</td><td>[REDACTED]</td></tr><tr><td>Totals:</td><td>\$408,393</td></tr></tbody></table>	1-2010 to 12-2010		Hours	Fees	[REDACTED]	[REDACTED]	Totals:	\$408,393
1-2010 to 12-2010										
Hours	Fees									
[REDACTED]	[REDACTED]									
Totals:	\$408,393									
LOUIS KARASIK RACHEL CAPOCCIA CASONDRA RUGA MITRA ESKANDARI ALEXIS FIERRO DONNA REZNICK	[REDACTED]	<table border="1"><thead><tr><th colspan="2">1-2011 to 12-2011</th></tr><tr><th>Hours</th><th>Fees</th></tr></thead><tbody><tr><td>[REDACTED]</td><td>[REDACTED]</td></tr><tr><td>Totals:</td><td>\$114,736</td></tr></tbody></table>	1-2011 to 12-2011		Hours	Fees	[REDACTED]	[REDACTED]	Totals:	\$114,736
1-2011 to 12-2011										
Hours	Fees									
[REDACTED]	[REDACTED]									
Totals:	\$114,736									
LOUIS KARASIK RACHEL CAPOCCIA CASONDRA RUGA GRACE SHAYWITZ EVAN WOOLLEY DONNA REZNICK	[REDACTED]	<table border="1"><thead><tr><th colspan="2">1-2012 to 11-2012</th></tr><tr><th>Hours</th><th>Fees</th></tr></thead><tbody><tr><td>[REDACTED]</td><td>[REDACTED]</td></tr><tr><td>Totals:</td><td>\$276,104</td></tr></tbody></table>	1-2012 to 11-2012		Hours	Fees	[REDACTED]	[REDACTED]	Totals:	\$276,104
1-2012 to 11-2012										
Hours	Fees									
[REDACTED]	[REDACTED]									
Totals:	\$276,104									
		<table border="1"><thead><tr><th colspan="2">2009-2012</th></tr><tr><th>Hours</th><th>Fees</th></tr></thead><tbody><tr><td></td><td></td></tr><tr><td>Totals:</td><td>\$837,006</td></tr></tbody></table>	2009-2012		Hours	Fees			Totals:	\$837,006
2009-2012										
Hours	Fees									
Totals:	\$837,006									

EXHIBIT 3

000089

EXHIBIT 4

000091